

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.: <b>12-O-17420-RAH</b>
	)	<b>12-N-17589-RAH (Cons.)</b>
<b>RITA ANN KAHLENBERG,</b>	)	
	)	<b>DECISION AND ORDER OF</b>
<b>Member No. 200518,</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
A Member of the State Bar.	)	
	)	

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Respondent Rita Ann Kahlenberg (respondent) was charged with eight counts of misconduct in one client matter and with willfully violating California Rules of Court, rule 9.20, by willfully disobeying or violating a court order requiring compliance with California Rules of Court, rule 9.20. She failed to participate either in person or through counsel, and her default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.<sup>1</sup>

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC),

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<sup>1</sup> Unless otherwise indicated, all references to rules are to this source.

and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

### **FINDINGS AND CONCLUSIONS**

Respondent was admitted to practice law in this state on March 3, 1999, and has been a member since then.

#### **Procedural Requirements Have Been Satisfied**

On March 27, 2013, the State Bar filed and properly served the Amended NDC on respondent by certified mail, return receipt requested, to her membership records address.<sup>3</sup> The NDC notified respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The NDC was returned unclaimed by the U.S. Postal Service after it made three attempts to deliver the mail.

Thereafter, the State Bar (1) sent two emails, with the NDC<sup>4</sup> attached both times, to respondent at an email address found in respondent's official membership records; (2) attempted to reach respondent twice by telephone at respondent's official membership records telephone

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<sup>2</sup> If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

<sup>3</sup> The initial NDC was filed and served on respondent by certified mail, return receipt requested, to her membership records address on March 20, 2013. The Declaration of R. Kevin Bucher attached to the State Bar's motion for entry of respondent's default said that on March 22, 2013, a return card was received by the State Bar for the initial NDC, signed by respondent.

<sup>4</sup> Although the declaration of the assigned deputy trial counsel does not refer to the Amended NDC, the court notes that the only difference between the NDC and the Amended NDC was that the Amended NDC included a copy of the Supreme Court order which imposed the California Rules of Court, rule 9.20 requirement that is the subject of case No. 12-N-17589. Accordingly, even if the original NDC was attached to these emails, respondent would have been given sufficient notice of the charges in this matter.

number; (3) sent a letter to respondent advising her of the State Bar's intention to file a motion for the entry of her default; and (4) conducted an internet search for information on respondent.

Nevertheless, respondent failed to file a response to the Amended NDC. On May 10, 2013, the State Bar filed and properly served a motion for entry of default on respondent by certified mail, return receipt requested, to her membership records address. The motion included a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to respondent.<sup>5</sup> (Rule 5.80.) The motion also notified respondent that if she did not timely move to set aside her default, the court would recommend her disbarment.<sup>6</sup> Respondent did not file a response to the motion, and her default was entered on June 10, 2013. The order entering the default was properly served on respondent at her membership records address by certified mail, return receipt requested. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and she has remained inactively enrolled since that time. The return receipt was returned to the State Bar Court showing that it was received by "S. Khahlenberg."

Respondent also did not seek to have her default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On December 20, 2013, the State Bar filed and properly served the petition for disbarment on respondent by certified mail, return receipt requested, to her membership records address. As required by rule 5.85(A), the State Bar reported in the petition that (1) respondent has not contacted the State Bar since June 10, 2013,

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<sup>5</sup> The motion for entry of respondent's default incorrectly identifies the date of filing of the Amended NDC as March 22, 2013, instead of March 27, 2013, and the due date for a response to the Amended NDC as February 19, 2013, instead of April 22, 2013. The court finds that these defects are merely typographical errors and respondent had sufficient due process.

<sup>6</sup> The State Bar's petition for disbarment sets forth that the return receipt for the default motion was signed by respondent on May 13, 2013.

when her default was entered and the order entering her default was served; (2) there are no other disciplinary matters pending against respondent; (3) respondent has two prior records of discipline; and (4) the Client Security Fund has not made any payments as a result of respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default.<sup>7</sup> The case was submitted for decision on January 15, 2014.

Respondent has two prior records of discipline.<sup>8</sup> Pursuant to a Supreme Court order filed on June 28, 2011, respondent was suspended from the practice of law for two years, the execution of which was stayed, and she was placed on probation for three years subject to conditions. Respondent stipulated in this matter to her (1) failure to promptly release to her client(s), at the request of the client(s), all client papers and property in two client matters; (2) failure to render appropriate accounts in one client matter; (3) failure to cooperate in a disciplinary investigation in four client matters; (4) failure to perform legal services with competence in two client matters; (5) failure to promptly respond to reasonable client status inquiries in two client matters; (6) improperly withdrawing from employment in two client matters; and (7) failure to promptly refund unearned fees in two client matters.

Pursuant to Supreme Court order filed on August 7, 2012, respondent's probation was revoked and she was suspended from the practice of law for one year and until she makes

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<sup>7</sup> The court notes that both the State Bar's motion for entry of default and petition for disbarment contain factual errors. The assigned deputy trial counsel is therefore admonished to carefully draft and review pleadings before filing them with the court. While the court was able to ascertain the true facts from the documents in the official file, and the court therefore finds that the entry of respondent's default and the discipline recommendation in this matter are proper, the errors delayed the court's evaluation of the motion for entry of default and the filing of the decision in this matter.

<sup>8</sup> The court takes judicial notice, pursuant to Evidence Code section 452, subdivision (d), that respondent has two prior records of discipline, admits the relevant records into evidence, and directs the Clerk to include copies in the record of this case.

restitution to two clients.<sup>9</sup> The court found that respondent failed to comply with certain conditions attached to her earlier disciplinary probation. Respondent failed to participate in this disciplinary proceeding.

### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of respondent's default, the factual allegations in the Amended NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the Amended NDC support the conclusion that respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

#### **1. Case Number 12-O-17420 (Butler Matter)**

Count One - Respondent willfully violated section 6068, subdivision (m) of the Business and Professions Code (failure to communicate), by failing to respond promptly to her client's reasonable status inquiries in the matter in which respondent had agreed to provide legal services.

Count Two - Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence), by failing to prepare and file a custody modification petition or any other documents on her client's behalf, and by failing to provide any other service of value to the client.

Count Three - Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to return unearned fees), by failing to return \$2,500 in unearned advanced fees paid by her client.

Count Four – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment), by failing to take reasonable steps to avoid

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<sup>9</sup> The Supreme Court order filed on August 7, 2012, was amended in its entirety by a Supreme Court order filed on August 28, 2012.

reasonably foreseeable prejudice to her client by providing the name of an attorney to take over the client's custody matter and returning unearned advanced fees.

Count Five - Respondent willfully violated section 6068, subdivision (a) of the Business and Professions Code (attorney's duty to support constitution and laws of United States and California), by holding herself out as practicing or entitled to practice law, when she had been suspended from the practice of law at the time she was retained by the client.

Count Six – Respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct (illegal fee), by accepting an advanced fee from her client when she was not authorized to practice law.

Count Seven - Respondent willfully violated section 6106 (moral turpitude), by concealing or misrepresenting to the client her status to practice law.

Count Eight - Respondent willfully violated section 6068, subdivision (i) (failure to cooperate in a State Bar investigation), by failing to respond to the State Bar investigator's two letters or otherwise cooperate in the State Bar's investigation.

## **2. Case Number 12-N-17589 (Rule 9.20 Matter)**

Count Nine - Respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned or suspended attorneys) by failing to file a declaration of compliance with rule 9.20 in conformity with the requirements of rule 9.20(c), thereby failing to timely comply with the provisions of the August 7, 2012, Supreme Court order requiring compliance with California Rules of Court, rule 9.20.<sup>10</sup>

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<sup>10</sup> The August 28, 2012, Supreme Court order identified and attached to the NDC is actually an order amending in its entirety, the Supreme Court order filed on August 7, 2012. Therefore, the order violated in this matter is the Supreme Court order filed on August 7, 2012, rather than the August 28, 2012, order as alleged in the Amended NDC.

## **Disbarment is Recommended**

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment is recommended. In particular:

(1) the Amended NDC was properly served on respondent under rule 5.25;

(2) reasonable diligence was used to notify respondent of the proceedings prior to the entry of her default, since (a) the Amended NDC was properly served on respondent at her membership records address, (b) emails, with the NDC attached, were sent to an email address found in respondent's official membership records; (c) attempts were made to reach respondent by telephone at her official membership records telephone number; (d) a letter was sent to respondent informing her of the State Bar's intention to file a motion for entry of respondent's default, and (e) an internet search for information on respondent was conducted;

(3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the Amended NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

## **RECOMMENDATION**

### **Disbarment**

The court recommends that respondent Rita Ann Kahlenberg be disbarred from the practice of law in the State of California and that her name be stricken from the roll of attorneys.

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**Restitution**

The court recommends that Respondent be ordered to make restitution to Robert Butler in the amount of \$2,500, plus 10 percent interest per year from October 14, 2011.

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

**California Rules of Court, Rule 9.20**

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

**Costs**

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

**ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Rita Ann Kahlenberg, State Bar number 200518, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: February \_\_\_\_, 2014

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RICHARD A. HONN  
Judge of the State Bar Court